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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 Yvette Mandujano,

7 Plaintiff,

8 v.

9 TSE Investments LLC; Regina Louie,

10 Defendants.

Case No. 2:24-cv-00442-GMN-DJA

11 **Order**

12 Before the Court is Plaintiff Yvette Mandujano's second amended complaint. (ECF No.
13 8). Plaintiff's second amended complaint does not state a claim upon which relief can be granted.
14 The Court thus dismisses Plaintiff's second amended complaint with leave to amend.

15 **I. Legal standard.**

16 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
17 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is
18 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks
19 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
20 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend
21 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
22 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
F.3d 1103, 1106 (9th Cir. 1995).

23 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
24 complaint for failure to state a claim upon which relief can be granted. Review under Rule
25 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
26 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
27 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
28 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual

1 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
2 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
3 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
4 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
5 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
6 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
7 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
8 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
9 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
10 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

11 Federal courts are courts of limited jurisdiction and possess only that power authorized by
12 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
13 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
14 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
15 federal law creates the cause of action or where the vindication of a right under state law
16 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
17 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
18 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
19 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
20 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal
21 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
22 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
23 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
24 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
25 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

1 **II. Discussion.**

2 Plaintiff sues Defendants TSE Investments LLC and Regina Louie.¹ Plaintiff does not list
3 an address for TSE Investments LLC, but identifies Louie as a resident of California. Plaintiff
4 asserts that the basis of the Court's jurisdiction over her claims is federal question jurisdiction
5 because Defendants have violated her Fourteenth Amendment rights. Plaintiff also appears to
6 allege a claim for negligence.

7 Plaintiff alleges various defects with the property she rents, including the ceiling caving
8 in, problems with the air conditioner, and mold, amongst other things. She alleges that the owner
9 of the property has failed to keep the premises in habitable condition. Plaintiff asserts that the
10 defects have resulted in her losing her job and her and her family falling ill. Plaintiff seeks six
11 million dollars in damages.

12 **A. Fourteenth Amendment claim.**

13 Plaintiff's Fourteenth Amendment claim fails for the same reason in her second amended
14 complaint as it did in her previous complaint: she has not alleged that either Defendant is a state
15 actor. Again, to obtain relief under 42 U.S.C. § 1983 for violation of a right secured by the
16 Constitution, the plaintiff must allege that the deprivation was caused by a person acting under
17 color of state law. *See West v. Atkins*, 487 U.S. 42, 48-49 (1988). The Court thus dismisses this
18 claim without prejudice and with leave to amend.

19 **B. Negligence.**

20 It is unclear that the Court has jurisdiction over Plaintiff's negligence claim. Negligence
21 is a state cause of action. Without her federal constitutional claim to establish jurisdiction,
22 Plaintiff must show that the Court has diversity jurisdiction over her case. Diversity jurisdiction
23 requires that she be a citizen of a different state than the Defendants and that her claim be more
24 than \$75,000. 28 U.S.C. § 1332(a); *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).
25 Plaintiff alleges that her claim is more than \$75,000. And she alleges that Louie is a resident of a

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27 ¹ Plaintiff no longer names "Gina" as a defendant. Additionally, although Plaintiff does not
28 identity Louie as the property owner, liberally construing Plaintiff's complaint, it appears that she
alleges that Louie owns the property and TSE Investments, LLC maintains it.

1 different state than her. However, Plaintiff does not allege the state in which TSE Investments
2 LLC is a resident. If TSE Investments LLC is a resident of Nevada, then the Court does not have
3 jurisdiction over Plaintiff's negligence claim. If it is not a resident of Nevada, then the Court
4 does have diversity jurisdiction over this claim. The Court thus dismisses Plaintiff's negligence
5 claim without prejudice and with leave to amend. In any amended complaint, Plaintiff must
6 allege in which state TSE Investments LLC is a resident.

7
8 **IT IS THEREFORE ORDERED** that Plaintiff's second amended complaint (ECF No.
9 8) is **dismissed without prejudice and with leave to amend**.

10 **IT IS FURTHER ORDERED** that Plaintiff shall have until **June 13, 2024** to file an
11 amended complaint to the extent she believes she can correct the noted deficiencies. If Plaintiff
12 chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a prior
13 pleading (i.e., the original complaint) to make the amended complaint complete. This is because,
14 generally, an amended complaint supersedes the original complaint. Local Rule 15-1(a) requires
15 that an amended complaint be complete without reference to any prior pleading. Once a plaintiff
16 files an amended complaint, the original complaint no longer serves any function in the case.
17 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
18 of each Defendant must be sufficiently alleged. **Failure to comply with this order may result**
19 **in a recommendation to the district judge that the case be dismissed.** The Clerk of Court is
20 kindly directed to send a copy of this order to Plaintiff.

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22 DATED: May 14, 2024

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DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE